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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SYLVIA M. ORTIZ,

Plaintiff,

v.

SODEXO, INC., a Delaware  
corporation,

Defendant.

CASE NO: 08 CV 1215 IEG JMA

DEFENDANT'S ANSWER AND  
AFFIRMATIVE DEFENSES TO  
COMPLAINT FOR DAMAGES

Date Filed: July 8, 2008  
Trial Date: None Set

Defendant Sodexo America, LLC, which is referred to in the Complaint for Damages ("Complaint") as Sodexo, Inc., ("Sodexo")<sup>1</sup> answers the Complaint and states as follows:

FIRST CLAIM

Sodexo denies that it has violated its statutory duties under California Code § 12940 *et seq.*

1. Upon information and belief, Sodexo admits the allegations contained in paragraph 1 of the Complaint.

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<sup>1</sup> Sodexo America, LLC is a subsidiary of Sodexo, Inc. and is the contracting entity that manages Sodexo's contract at Sharp Grossmont Hospital.

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2. Sodexo America, LLC admits that it is a Delaware single member limited liability company and admits that its principal place of business is in Maryland as alleged in paragraph 2 of the Complaint.

3. Sodexo denies the allegations contained in paragraph 3 of the Complaint.

4. Sodexo admits that, in August 2007, plaintiff was a Sodexo employee working in San Diego County. Sodexo also admits that the period of plaintiff's employment by Sodexo was from on or about July 31, 2006 until on or about September 7, 2007. Sodexo admits that plaintiff's employment ended on or about September 7, 2007. Except as specifically admitted herein, Sodexo denies the allegations contained in paragraph 4 of the Complaint.

5. Sodexo denies the allegations contained in paragraph 5 of the Complaint.

6. Upon information and belief, Sodexo admits that plaintiff filed a Complaint for Discrimination with the Department of Fair Employment and Housing and that that case is closed. Except as specifically admitted, Sodexo denies the allegations contained in paragraph 6 of the Complaint.

7. Sodexo denies the allegations contained in paragraph 7 of the Complaint.

8. Sodexo denies the allegations contained in paragraph 8 of the Complaint.

9. Sodexo is without knowledge or information sufficient to form a belief as to whether plaintiff has incurred and/or will continue to incur attorneys' fees and expenses and on that basis denies those allegations. Sodexo denies that it has violated the California Government Code and further denies that plaintiff is entitled to recover attorneys' fees and costs from Sodexo. Except as specifically

1 admitted, Sodexo denies each and every allegation contained in paragraph 9 of  
2 the Complaint.

3 10. Sodexo denies the allegations contained in paragraph 10 of the  
4 Complaint.

5 SECOND CLAIM

6 11. Sodexo incorporates by reference its responses to paragraphs 1 and 2  
7 of the Complaint by reference.

8 12. Sodexo denies the allegations contained in paragraph 12 of the  
9 Complaint.

10 13. Sodexo admits that plaintiff was employed by Sodexo in  
11 August 2007. Sodexo admits that plaintiff's employment ended on or about  
12 September 7, 2007. Except as specifically admitted, Sodexo denies the  
13 allegations contained in paragraph 13 of the Complaint.

14 14. Sodexo denies the allegations contained in paragraph 14 of the  
15 Complaint.

16 15. Sodexo is without sufficient information to admit or deny whether  
17 plaintiff has incurred and/or will continue to incur attorneys' fees and expenses.  
18 Sodexo denies that it has violated the California Labor Code and further denies  
19 that plaintiff is entitled to recover attorneys' fees from Sodexo. Except as  
20 specifically admitted, Sodexo denies the allegations contained in paragraph 15 of  
21 the Complaint.

22 16. Sodexo denies that plaintiff is entitled to any of the damages or other  
23 relief identified on page 5 of her Complaint.

24 WHEREFORE, Sodexo, having answered the Complaint prays as follows:

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1 That the Complaint be dismissed with prejudice, that Sodexo be awarded  
2 its costs, including reasonable attorneys' fees, and that the Court awards such  
3 other and further relief as it deems just and proper.

4 AFFIRMATIVE DEFENSES

5 Sodexo, without admitting any of the allegations of the Complaint, asserts  
6 the following affirmative defenses:

- 7 1. Any claim for employee benefits is completely preempted by the  
8 Employee Retirement Income Security Act of 1974, 29 U.S.C.  
9 § 1001 *et seq.*;
- 10 2. Plaintiff fails to state any claim upon which relief can be granted;
- 11 3. Plaintiff's claims are barred by the failure to exhaust all state and  
12 federal administrative remedies;
- 13 4. Plaintiff is estopped by her conduct from receiving any relief against  
14 Sodexo;
- 15 5. Plaintiff has waived and/or released any right to recovery against  
16 Sodexo;
- 17 6. Plaintiff's claims are barred by all applicable state and federal  
18 statutes of limitations;
- 19 7. Plaintiff's claims are barred by laches;
- 20 8. Plaintiff's claims are barred because any employment was  
21 terminable at-will with or without cause;
- 22 9. If it is found that plaintiff was terminated by Sodexo and that  
23 plaintiff was not employed at-will, plaintiff's claims are barred on  
24 the grounds that any decision was made in good faith based upon  
25 good and reasonable cause which was acquired before, during, or  
26 after plaintiff's employment;

10. Plaintiff's claims are barred because Sodexo's alleged conduct was privileged, excused, and/or justified;
11. Plaintiff's claims are barred on the grounds that plaintiff has or had unclean hands;
12. Plaintiff's claims are barred or reduced by the breach of her statutory obligations and by her misrepresentations;
13. Plaintiff's claims are barred or reduced by contributory negligence or fault and/or comparative negligence or fault;
14. Plaintiff's claims are barred by the exclusive remedy under the California Workers' Compensation Act in that her alleged injuries involve compensable injuries which occurred, if at all, when plaintiff was subject to the compensation provisions of the California Workers' Compensation Act;
15. Plaintiff's claims are barred, in whole or in part, by her failure to mitigate damages;
16. Plaintiff has been paid and/or received all sums and benefits due by virtue of plaintiff's employment;
17. Plaintiff's claims are barred by the business necessity/job relatedness defense;
18. Plaintiff's claims are barred by the avoidable consequences doctrine;
19. Plaintiff's claims are barred because Sodexo did not act willfully.
20. Plaintiff's claims are barred as plaintiff's gender/religion was not a motivating factor in any employment decisions involving her; and
21. Defendant reserves the right to amend the Answer to assert additional defenses as the claims of plaintiff become more fully disclosed during the course of the litigation.

1 WHEREFORE, Sodexo, having asserted its affirmative defenses, prays as  
2 follows:

3 That the Complaint be dismissed with prejudice, that Sodexo be awarded  
4 its costs, including reasonable attorneys' fees, and that the Court award such  
5 other and further relief as it deems just and proper.

6 DATED: July 31, 2008

Respectfully submitted,

7 MARKS, GOLIA & FINCH, LLP

8  
9 By: /S/ Mark T. Bennett, Esq.

10 MARK T. BENNETT

Attorneys for Defendant

11 Sodexo America, LLC

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been filed electronically on this 31st of July 2008 and is available for viewing and downloading to the ECF registered counsel of record:

Via Electronic Service/ECF:

Sean T. O'Bryan, Esq.  
Attorney for Sylvia M. Ortiz  
[stohm@sbcglobal.com](mailto:stohm@sbcglobal.com)

DATED: July 31, 2008

MARKS, GOLIA & FINCH, LLP

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